

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation
Petitioner

v

Michael Brown, Jr.
Respondent

Enforcement Case No. 08-5674

For the Petitioner:

Marlon F. Roberts
Office of Financial & Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Jeffrey B. Linden
Maroko and Landau, PC
Suite 214
32255 Northwestern Highway
Farmington Hills, MI 48334-1573

Issued and entered
this 5th day of January 2009
by Ken Ross
Commissioner

FINAL DECISION

This final decision replaces the final decision issued November 10, 2008. The Petitioner, on November 18, requested that the November 10 decision be rescinded because the parties had agreed to an extension of time for Respondent to reply to Petitioner's October 17, 2008 Motion for Summary Decision. This agreement was apparently misplaced by one of the parties. As a result, Petitioner's motion for summary decision was granted without the Commissioner having the benefit of Respondent's brief in opposition to Petitioner's motion. Respondent's brief has now been filed and it is appropriate for the Commissioner to issue a new Final Decision addressing the issues raised by Respondent.

This matter began when Respondent applied for a resident insurance producer license in April 2008. His application was denied for one reason – Respondent had been convicted of a felony (a drunk driving offense) in 2001. Respondent appealed the denial and a notice of hearing was issued on August 19, 2008. On October 17, 2008, the Petitioner filed a Motion for Summary Decision pursuant to Insurance Bureau Hearing Rule 11, 1983 AACSR 500.2111, asserting that there was no genuine issue as to any material fact in this case and that Petitioner was, therefore, entitled to a decision in its favor as a matter of law. Hearing Rule 11 provides:

A party may move for a summary decision in the party's favor upon any 1 of the following grounds:

- (a) The commissioner lacks jurisdiction over the person or the subject matter.
- (b) The opposing party has failed to state a claim upon which relief can be granted.
- (c) There is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law.

It is appropriate that the matter be resolved by summary decision under Rule 11 because there are no genuine issues of material fact in this case. The following facts are not in dispute:

- Respondent was convicted in Oakland County Circuit Court of operating a motor vehicle under the influence of alcohol (MCL 257.625). In January 2002, Respondent was fined and sentenced three years of probation. He was discharged from probation in October 2004.
- Respondent applied for a Michigan insurance producer license in March 2008. He was denied the license because of his felony conviction.

The following provisions of the Michigan Insurance Code apply to insurance producer licensing decisions when a felony conviction has been disclosed:

Section 1205(1)(b), MCL 500.1205(1):

(1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

* * *

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

Section 1239(1)(f), MCL 500.1239(1)(f):

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

Respondent argues that the Commissioner must also apply the standards of the Occupational License for Former Offenders Act (Act 381 of 1974, MCL 338.41 *et seq.*) when evaluating insurance producer licensing applications. This Act provides guidance for state officials who are required to make licensing decisions where "good moral character" is a requirement for receiving a professional or occupational license.

Section 1(1) of Act 381, MCL 338.41(1), provides:

The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.

Section 2 of Act 381, MCL 338.42, provides:

A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed.

The Occupational License for Former Offenders Act does not apply to insurance producer licensing decisions. In March 2002, the Insurance Code was amended by Public Act 228 of 2001 which eliminated "good moral character" as a licensing criterion for insurance producers. Instead, the statute under which insurance producers are licensed explicitly prohibits the Commissioner from issuing a producer license to any individual who has been convicted of a felony. Because Respondent has been convicted of a felony, he is not qualified to hold an insurance producer license. The question of licensure ends here; the Commissioner does not have the discretion to assess an applicant's "good moral character" in situations where the applicant has been convicted of a felony.

It is not claimed that Respondent, by virtue of his felony conviction, lacks good moral character. Rather, the felony conviction shows that Respondent does not meet the minimum licensing requirements of Section 1205(1) of the Insurance Code. When an applicant has a felony conviction, the only possible outcome is that the application "shall not be approved." The insurance producer licensing statute does not confer upon the Commissioner the kind of discretion which Respondent claims the Commissioner possesses. Respondent's arguments are based on the assumption that the Commissioner has the latitude to make judgments concerning

“good moral character” in insurance producer licensing decisions. The relevant Insurance Code provisions do not confer that discretion.

Respondent also argues that denying a license solely on the basis of a felony conviction is a violation of state and federal constitutional equal protection provisions. The Michigan Insurance Code requires that a license be denied in this case. The Commissioner declines to reach a different result based on constitutional arguments. An administrative agency’s powers are limited to those which are found in the agency’s enabling statute. The statute in this case requires the Commissioner to deny an insurance producer license to any individual who has been convicted of a felony. The Commissioner is without authority to order a different result based on constitutional arguments. See *Dation v. Ford Motor Co.*, 314 Mich. 152, (1946) and *Wikman v City of Novi*, 413 Mich. 617 (1982).

The Commissioner concludes that Respondent, by virtue of his felony conviction, is not qualified to hold a Michigan insurance producer license. Petitioner’s motion for summary decision is granted.

ORDER

Therefore, it is ordered that:

1. The Final Decision of November 10, 2008 is rescinded.
2. Petitioner’s motion for summary decision is granted.
3. Respondent’s application for a resident insurance producer’s license is denied.

A handwritten signature in black ink, appearing to read 'K. Ross', written over a horizontal line.

Ken Ross
Commissioner

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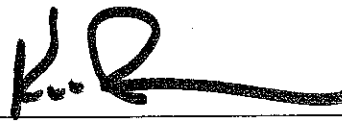
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Ken Ross
Commissioner